

LABOUR DEPARTMENT

The 11th March, 1986

No. 9/8/86-6Lab./1694.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s O.K. Metal Works, Pataudi Road, Gurgaon.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 128 of 1984

between

SHRI HARBANS LAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S O. K. META
WORKS, PATAUDI ROAD, GURGAON

Present—

Shri P.S. Yadav, for the workman.
Shri S.K. Goswami, for the management.

AWARD

This industrial dispute between the workman Shri Harbans Lal and the respondent management of M/s O.K. Metal Works, Pataudi Road, Gurgaon, has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/9-84/22354-59, dated 4th June, 1984, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Harbans Lal was justified and in order? If not, to what relief is he entitled ?

According to the demand notice, the workman was appointed on 1st July, 1975 and his services were illegally terminated on 9th December, 1983. He has prayed for reinstatement with continuity of service and with full back wages.

The management has contended this claim. It is alleged that he was never workman but he was a supervisor drawing Rs. 1,150 p.m. Objection further taken that the firm was governed under the Punjab Shops and Commercial Estt. Act. He is not entitled to be reinstated. Objection is further taken that the O. K. Metal Works has dissolved and is no more in existence and the reference becomes infructuous. During the process of dissolution, the workman approached the management and Rs 4,600.00 was paid to the workman in full and final settlement of all his claims. He has also relinquished his right of reinstatement. It is claimed that the services of the workman were terminated because the respondent was not in a position to financially afford by keeping the claimant on such higher salary. He was given an opportunity to find a suitable job. Notice pay was also sent by money order which he refused to receive. The termination of the claimant is justified, valid and legal. It is further alleged that the firm has been purchased in the month of April, 1983. It is further stated that the respondent never knew for the work he has done with the previous management. His previous letter of appointment is alleged to be fictitious. It appears the signatures of Shri Hari Singh, who has no authority to issue such letter. He was a partner of 1/5 share only. He has no authority to appoint the workers. It is further alleged that the claimant has not completed 240 days of service.

All these averments have been denied by the workman in his rejoinder. It is alleged that some partners of the respondent separated and other partners have continued the firm. If they have changed the name it does not alter the position of the workers. He has denied that he was a supervisor. He has denied that he has settled his dispute. The reference was contested on the following issues :—

- (1) Whether the claimant was not a workman within the definition of 2(s) of the I.D. Act?
- (2) Whether the respondent management is governed under the Punjab Shops and Commercial Estt. Act? If so, its effect?
- (3) Whether the respondent unit has been dissolved? If so, to what effect?
- (4) Whether the reference is bad in law?
- (5) Whether the workman has settled in full and final?
- (6) As per reference?

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issue are as under :—

Issue No. 1 :

I have perused the statement of MW-2 Shri Sham Sunder. He has stated that the applicant was a supervisor. He has not given the detail of the functions of the claimant. He has admitted in his cross-examination that he used to get prepared the dies from the claimant. The claimant has also claimed that he was die-maker. There is no evidence that he had any appointing authority or could sanction leave or do any supervisory work. His main duties were of die-making. The workman as WW-1 has also supported his contentions. I, therefore, find that the claimant was a workman and not a supervisor.

Issue No. 2 :

It is contended that the respondent management is covered under the Punjab Shops and Commercial Estt. Act. Hence the claimant is not a workman and he is not entitled to be reinstated. Reliance is placed on the judgement of Hon'ble High Court in Central Co-operative Bank vs. Presiding Officer, Labour Court, Jullundur ; 1980 S.L.R. III page 392. Reliance is placed on the statement of MW-1 Shri Jagdish Singh Raghav, Labour Inspector. He has stated that the respondent company is registered under the Punjab Shops and Commercial Estt. Act on 30th March, 1982, under registration No. 3279 and at that time only five workmen were working. He has himself inspected the firm. The claimant has been working since 1979 whereas the respondent management is registered under the Punjab Shops & Commercial Estt. Act only in the year 1982. Hence in my opinion case of the workman is not covered under the Punjab Shops and Commercial Estt. Act. WW-2 Shri Subash Gupta, partner of the respondent, has admitted that some time 10/12 workers were working in the establishment. Hence the respondent is not covered under Punjab Shops and Commercial Estt. Act.

Issue No. 3 :

MW-2 Shri Sham Sunder has stated that the respondent firm has been dissolved and the respondent company has been closed. He has relied upon the copy of resolution of MW-2/2. He has further relied upon certificate of Labour Inspector MW-2/3 that the factory has been closed. Shri Jagdish Singh Raghav, Labour Inspector has been examined as MW-1. He has stated that he himself inspected the firm and found that the firm has been closed. He has inspected the firm on 9th November, 1984. As against this evidence, the workman has examined WW-4 Shri Megh Raj, that the respondent factory is still working and his name has been changed to V.K. Metal. The worker has also stated as WW-5 that M/s O.K. Metal and Sunrise are owned by one person Shri Sham Sunder and his wife, Hari Singh Yadav, Gobind Ram Gupta and Subhash Gupta are the partners. Office of both the factories is the same. Metal work is being done in O.K. Metal and rubber work is done in M/s Sunrise Rubber and O.K. Metal is changed to M/s V.K. Metal Works. From this evidence of the workman, it is proved that the O.K. Metal is closed at the spot and new firm M/s V.K. Metal came into existence in the same premises. M/s O.K. Metal Works has been finally closed and proved by Labour Inspector Shri Jagdish Singh Raghav. As the respondent factory has been closed the claimant is not entitled to be reinstated.

Issue Nos. 4, 5 and 6 :

The respondent has relied upon the receipt MW-2/4 that the workman has received Rs. 4,600 and has settled his dispute. This receipt is dated 7th May, 1984, when the reference has not been received in this court. It has been signed by the workman with the same ink in which his voucher is written. The workman has not specifically denied the execution of this receipt. In his cross-examination the workman has admitted that MW-2/4 bears his signatures. Again said these signatures are identical with his signatures and that he has never signed in red ink. He has not explained how he has signed this receipt. In his rejoinder he has not alleged that how his signatures were obtained on MW-2/4. MW-2 Shri Sham Sunder has clearly stated that the workman has received Rs 4,600 from him and signed the receipt in his presence. This is almost exact amount of retrenchment benefit. It is, therefore, clear that the workman has received the amount of Rs. 4,600,—vide MW-2/4 and has settled his dispute. It has been written on this voucher that this amount is paid in full and final settlement of all his claims. I, therefore, find that the workman has settled his entire dispute with the respondent management and he is not entitled to any relief. I, therefore, give the award that the dispute has been settled and the claimant is not entitled to any relief.

Dated the 13th December, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endst. No. 500, dated the 14th February, 1986

Forwarded (two copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.